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# Papua New Guinea

## The state as killer?

*The death penalty is not the answer to the law and order problems.  
Nowhere in the world where the death penalty has been or is being administered,  
serious crimes like murder have been stopped.*

Dr. John Nonggor, a leading Papua New Guinea law professor

*It never deterred the people during the traditional times and it would never deter it now either.*  
Sophia Gegeyo, Papua New Guinea Council of Churches

## 1 Introduction

With the recent abolition of the death penalty for all crimes in Samoa<sup>1</sup>, and for all crimes except under military law in Fiji<sup>2</sup>, Papua New Guinea (PNG) has become the last independent South Pacific state to apply the death penalty. All other member states of the principal regional grouping, the Pacific Islands Forum,<sup>3</sup> either no longer have laws providing for the death penalty, or have stopped enforcing them, often decades ago. Some, like the Federated States of Micronesia and the Marshall Islands, have even prohibited the death penalty in their constitutions.<sup>4</sup> In Samoa, where the South Pacific's last death sentence outside PNG was handed down in April 2003, no-one on death row has been executed since the country's independence from New Zealand in 1962.

In imposing death sentences and now preparing procedures for executions, PNG is clearly running counter to trends both in the South Pacific region and worldwide towards abolition of the death penalty. Almost all South Pacific states and 117 countries world-wide have now abolished it in law or practice, with only 78 countries still retaining it. At least 35 countries have abolished the death penalty since 1990, and each year since 1997 the United Nations Commission on Human Rights has passed a resolution calling on countries retaining the death penalty to establish a moratorium on executions. In April 2003, PNG was among a record 75 United Nations member states supporting the latest such resolution. Amnesty International is concerned that the PNG Government now appears to be reversing its support for international moves towards abolition of the death penalty world-wide.

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<sup>1</sup> By an act of the Samoan Parliament on 15 January 2004.

<sup>2</sup> By legislation which came into effect in March 2002.

<sup>3</sup> Australia, the Cook Islands, Fiji, Nauru, Kiribati, Marshall Islands, the Federated States of Micronesia, New Zealand, Niue, Palau, Papua New Guinea, Samoa , Solomon Islands, Tonga, Tuvalu, Vanuatu.

<sup>4</sup> Section 6(1) - "Cruel and Unusual Punishment" - of the Constitution of the Republic of the Marshall Islands of 1979 includes the following provision: "No crime under the law of the Republic of the Marshall Islands may be punishable by death."

While no-one has been executed in PNG since 1954 (when the territory was under Australian administration), Amnesty International now fears that recent political developments and the search for more ‘effective’ responses to violent crime could propel PNG towards a resumption of executions. According to the government, in November 2003 seven men were awaiting either executions or the outcome of appeals against a death sentence.<sup>5</sup> More recently, a man was sentenced to death for wilful murder in March 2004.<sup>6</sup> At the same time, Minister for Justice Mark Maipakai announced that he had led a delegation to Singapore to study judicial processes on the death penalty and its practical application with a view to adopting them in PNG. This followed Cabinet approval in December 2003 for the drafting of a proposal to Parliament for the implementation of execution procedures.<sup>7</sup>

Like the decision in 1991 to re-introduce the death penalty, such moves towards executions appeared to be a reaction to public anger over violent crime. In handing down PNG’s latest death sentence, the judge was reported as saying that it was necessary for the court to consider (in this case local) community opinion.<sup>8</sup> Amnesty International is concerned that such decisions did not take sufficient account of strong and prominent opposition within PNG against the death penalty, or scientific evidence that the death penalty does not have a unique deterrent effect when compared with other forms of punishment, such as imprisonment. Criminologists have long argued that the best way to deter crime is to increase the certainty of detection, arrest and conviction. Amnesty International is also concerned that PNG law lacks sufficient guarantees to protect juvenile offenders from execution.

Amnesty International opposes the death penalty worldwide in all cases without exception. The death penalty is a violation of a fundamental human right: the right to life. It is also the ultimate cruel, inhuman and degrading punishment. Unlike almost any other punishment, such as imprisonment, it is irrevocable once carried out. There is no escaping the risk of error which can lead to the execution of an innocent person.

As an organization concerned with the victims of human rights abuses, Amnesty International recognizes the suffering of victims of crime and their families. Through its work with the victims of cruelty and relatives, Amnesty International has become closely familiar with the suffering caused by serious violence. However, executions are brutalizing, achieve nothing but revenge, and cause great anguish for the families of those who are executed, and in some cases even for the relatives of their victims. Moreover, they do not achieve the intended outcome of reducing violent crime. Ultimately, executions are as much an act of violence and cruelty as the crimes they purport to punish. In addition, in a country like PNG

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<sup>5</sup> Justice Minister Mark Maipakai in Parliament, as reported in *The National*, 12 November 2003. Amnesty International understands that at least three of the men have by now had their sentences commuted to prison terms.

<sup>6</sup> Twenty-nine year old Ben Simakot was sentenced to death by National Court Judge Ambeng Kandakasi for the wilful murder of a mother and her son near Vanimo in July 2002.

<sup>7</sup> “Execution methods to be studied”, *The National*, 8 December 2003.

<sup>8</sup> “It is necessary to consider input from the community [...]The court is duty bound to consider whether or not to act on the views of the community.” Attributed to Mr Justice Ambeng Kandakasi; “Death for rapist-murderer”, *The National*, 29 March 2004.

with strong cultural traditions, including so-called ‘pay-back’ killings<sup>9</sup>, executions may even increase the risk of violence. Citizens discussing the enforcement of the death penalty have expressed the view that those involved in carrying out executions might themselves become the target of ‘payback’ violence.

This report examines developments on the application of the death penalty in PNG, in the context of those in some other South Pacific states. It emphasizes the cruel and arbitrary nature of the death penalty. The report urges the PNG Government to halt moves towards executions, and instead declare a moratorium on all executions as a first step towards abolishing the death penalty, and to work with international donors towards a more effective system of fighting violent crime.

## 2 The death penalty in PNG

### 2.1 Provisions in PNG law

The death penalty for wilful murder was abolished in 1970, but in August 1991 parliament re-introduced it as an amendment to the Criminal Code.<sup>10</sup> On the day of the parliamentary decision, 42 members of parliament were absent for the vote, 48 voted in favour of the amendment and 19 voted against. Among those absent was former Prime Minister Sir Julius Chan who had publicly opposed the death penalty. The decision to amend the law stated that the death penalty for wilful murder should not be mandatory, but should be at the discretion of the judge. In 1993 the Public Prosecutor issued guidelines to judges on the imposition of the death penalty in cases of wilful murder, and in 1995 the courts imposed the first death sentence. However, PNG legislation does not set out detailed procedures for executions. The Criminal Code provides that the death penalty “*shall be carried out by hanging the offender by his neck until he is dead*” (Section 614 (1)). Commenting on the “administrative machinery”, the Justice Minister was recently reported as saying that:

*While death penalty is clearly defined under the Criminal Code Act and the Defence Force Act, the administrative mechanisms have not been attended to yet. Such include*

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<sup>9</sup> Payback in PNG has been defined as a “violent revengeful act that pays back a person or his or her family for a grievance”, in Pitts, Maxine, “Crime and corruption – does Papua New Guinea have the capacity to control it?” Pacific Economic Bulletin, 16(2) 2001, p 134. The practice is widely known and its existence has been recognized in the administration of law, e.g. as an explanation for police inaction in a court ruling (Yomo v The State, 1990 PNGLR 554).

<sup>10</sup> Section 299 (2). In the twenty years prior to 1991, the Criminal Code already provided for the death penalty for treason, piracy with violence and attempted piracy with personal violence. However, it was never imposed for these crimes, nor were there any executions for wilful murder after 1954. Exact figures on the number of people executed prior to 1954 are not available, although it is known that at least 67 people were executed by hanging under the Australian, British and German colonial administrations of PNG between the two world wars. The Defence Forces Act also provides for the death penalty.

*the place of execution, the construction of the structure to hang, who is to be the executioner, the rights of certain persons to view the execution, the appeal process and adequate facilities to accommodate detainees on death row, etc.*<sup>11</sup>

The August 1991 parliamentary amendment was passed in response to a worsening law and order situation, including a rising rate of violent crime, in particular rape and murder. Over the past 30 years there have been repeated periods of heightened public concern in PNG about highly-publicized incidents of such violent crimes. These have usually led to calls by some political leaders and senior police officers for the application of the death penalty. In March 1991, the government announced wide-ranging measures against crime, including the construction of additional maximum security prisons, the introduction of identity cards, the tattooing of convicted offenders, tightened vagrancy laws and the re-introduction of the death penalty for murder, rape and drug offences. However, the only measure implemented was the reintroduction of the death penalty for the crime of wilful murder.<sup>12</sup>

Individuals sentenced to death in PNG have the right of appeal. The first avenue of appeal is to the Supreme Court to which an application must be submitted within 40 days of sentencing. If this application is unsuccessful, an appeal can be made to the Advisory Committee on the Power of Mercy. The Committee, appointed by the Minister of Justice, comprises a church minister, a lawyer, a community worker, a medical practitioner with experience in psychiatry and a Member of Parliament. After considering such an application, the Committee makes a recommendation to the National Executive Council (NEC) - PNG's Cabinet, chaired by the Prime Minister - as to whether or not mercy should be granted in a particular case. The recommendation is then passed to the Head of State, the Governor General, with whom the final decision rests. Should the death sentence be upheld, the Head of State, acting on the advice of the NEC will set the time and date of execution.

## **2.2 Waiting for the hangman – inhuman conditions on death row**

Prisoners sentenced to death in PNG are usually kept among other convicted prisoners in prisons such as Bomana Prison outside the capital, Port Moresby. Bomana Prison has experienced rioting and mass escapes as a result of poor prison conditions, including severe and prolonged shortages of food. Conditions in several other PNG prisons where prisoners on death row may be held have at times amounted to cruel, inhuman and degrading punishment, prompting health authorities to order their closure.

For example, in September 2003 Buimo prison in Lae, Morobe Province, was ordered by the National Court to be closed for four years for renovations. The Governor of the province, Luther Wenge, had taken court action against the national prison authorities in order to compel them to improve conditions at the prison which was suffering from severe hygiene

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<sup>11</sup> "PNG studies Singapore law", *The National*, 26 March 2004.

<sup>12</sup> Sinclair Dinnen, *Law and order in a weak state: Crime and politics in Papua New Guinea* (2001), p 70.

problems. Like other jails in PNG, Buimo prison was found to have been severely overcrowded, which contributed to the death of seven prisoners and the hospital treatment of more than 60 in 2002 and early 2003. Doctors at the time suspected an outbreak of dysentery among some prisoners, while autopsy reports of three dead prisoners stated that they had died from viral myocarditis, an inflammation of the heart caused by a virus (or viral infection), to which crowded conditions at the prison had contributed.<sup>13</sup> In October 2001, an international team of medical volunteers, assisted by the organization Prison Fellowship PNG, toured PNG prisons at Bomana, Mount Hagen, Lae and Rabaul, examining 800 prisoners including several on death row. They found one prison where tuberculosis was rife, while generally describing respiratory infections, pterygia<sup>14</sup> and sexually transmitted diseases as “ubiquitous”. According to their findings, skin diseases such as scabies were widespread in the most crowded, least hygienic prison in the highlands. Amnesty International urges the PNG authorities to ensure that no-one risks serious illness or death from prison conditions, whether sentenced to death or to a prison term.

### **2.3 Risk of executing the innocent**

*“Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensures a fair trial, at least equal to those contained in Article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”<sup>15</sup>,*

Following PNG’s re-introduction of the death penalty for wilful murder, the courts have at least twice overturned death sentences as a result of judicial errors, highlighting the risk that people may be executed on the basis of flawed judicial proceedings. On 20 February 1995, Charles Bougapa Ombusu became the first person to be sentenced to death, in Popondetta, Northern Province, for the fatal shooting of the father of a girl he had raped. On appeal, the Supreme Court in April 1995 acquitted Charles Ombusu of the murder conviction because it found he had acted in self-defence when shooting. Among the six other men sentenced to death in PNG since 1995 is Arua Maraga Hariki, convicted of the killing of two teenage boys by a bomb in April 2001. Again, a judicial error in the sentencing on 23 January 2003 led to the lifting of a death sentence in relation to one of the two murder convictions. The sentencing judge of the National Court recalled the court and was reported as amending the sentences in the following words: *“In so far as the first [murder charge is concerned], I sentence you to life, in so far as to the second count, I sentence you to death.”*<sup>16</sup>

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<sup>13</sup> Richard Sikani, “Problems and epidemics in jails”, *Post Courier*, 27 August 2003.

<sup>14</sup> An eye disease which can lead to blindness.

<sup>15</sup> Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty, adopted by the United Nations Economic and Social Council in resolution 1984/50 on 25 May 1984 and endorsed by the UN General Assembly in resolution 39/118, adopted without a vote on 14 December 1984.

<sup>16</sup> “Judge corrects error in Hariki sentence”, *The National* 6 Feb 2003.

In practice, no criminal justice system has shown itself capable of selecting consistently and fairly who should live and who should die. Those sentenced to death are not always guilty of the most heinous crimes, but are those who have less skilled lawyers to defend them, or whose social class or ethnic origin make them vulnerable to unfair conviction by imperfect legal systems. The risk of a miscarriage of justice and the execution of innocent people is inherent in the use of the death penalty. Peter Barter, a government minister, in an article about the death penalty urges PNG's Christian leaders, criminologists and sociologists, lawyers and the judiciary as well as prison officials to contribute to public debate on the death penalty, for example by reporting on the risk of innocent persons being executed in PNG:

*Over-zealous prosecution, mistaken or perjured testimony, faulty investigations, the defendant's previous record, inept defence counsel, and community pressure for conviction all contribute to miscarriage of justice. The mistake is irrevocable once the accused is executed.*

*Is the operation of our law so perfect we can avoid condemning the innocent? Imagine you are arrested for a murder you did not commit. The murder was brutal. But you did not do it. The prosecutor needs to find someone guilty because of pressure from the public and politicians. They find you guilty. You are sentenced to death.*

*If you let a few innocent people be executed, you must be willing to be one. Is it fair to say "a few innocent people are a small price as long as I'm not one"?*

This risk has been illustrated in the United States, for example, where 113 prisoners have been released from death row since 1973 after evidence emerged of their innocence. Some had come close to execution after spending many years under sentence of death. Recurring features in their cases include misconduct by police or prosecutors; the use of unreliable witness testimony, physical evidence or confessions; and inadequate representation by defence lawyers. In January 2000 the Governor of the US state of Illinois declared a moratorium on executions following the exoneration of the 13<sup>th</sup> death row prisoner in the state found to have been wrongfully convicted since the USA resumed executions in 1977. The Governor commuted the death sentences of 167 prisoners and pardoned four others who he believed had been tortured into confessing to crimes they did not commit.<sup>17</sup>

Amnesty International is concerned that in PNG, those unable to afford private legal assistance could be at increased risk of facing the death penalty. The organization is further concerned that most PNG's public solicitors have little or no experience in defending death penalty cases.

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<sup>17</sup> Amnesty International, *The death penalty worldwide: developments in 2003*, April 2004 (AI Index ACT 50/007/2004), also at <http://web.amnesty.org/library/index/ENGACT500072004>. For more information about the death penalty in the USA, contact Amnesty International or see <http://www.amnestyusa.org/abolish/index.html>.

## 2.4 Risk of executing juveniles

In addition, Amnesty International is concerned that juvenile offenders in PNG may be at risk of execution – contrary to PNG’s obligations under international law. The country does not appear to have any legal provisions preventing the execution of juveniles, even though it is a state party to the Convention on the Rights of the Child, which prohibits the death penalty “for offences committed by persons below eighteen years of age” (Article 37(a)). As recently as January 2004,<sup>18</sup> the UN Committee on the Rights of the Child, which supervises the implementation of the Convention, urged PNG to ensure the full implementation of its obligations on juvenile justice under the Convention, particularly in relation to provisions including the prohibition of cruel, inhuman or degrading treatment or punishment, the death penalty and life imprisonment without the possibility of release. The UN Death Penalty Safeguards<sup>19</sup> also prohibit executions of juveniles, as does international customary law.

Many people in PNG do not have birth certificates, resulting in uncertainty about their precise age. Ages are frequently determined by recalling events that occurred both locally and nationally at the time of an individual’s birth. This can present particular problems for the courts. When there is uncertainty, the age of a defendant is determined by judges after seeking the views of relatives and friends about the possible age of the individual. While Amnesty International is sensitive to the difficulties of accurately recording dates of births in PNG, the organization is concerned that this may lead to uncertainty about ages of offenders. Amnesty International calls for legal protection of minors against the death penalty and urges the Papua New Guinea Government to implement the Committee on the Rights of the Child’s recommendations.

## 2.5 Public debate about the death penalty

In 1991, the re-introduction of the death penalty for murder in PNG was justified on the grounds that it had ‘popular support’. According to then Justice Minister Bernard Narokobi, who was himself opposed to the death penalty, it “reflected the community’s outrage and disgust” at violent crime.<sup>20</sup> However, Amnesty International is concerned that the notion of popular support for the death penalty is often used by governments to justify the use of capital punishment. In any event, no human rights violation, including the death penalty, can ever be justified even if there is popular support. Moreover, when gauged by opinion polls, public opinion on the death penalty is often based on an incomplete understanding of the relevant facts. When a child murder in Samoa in February 2003 triggered a public debate on the death

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<sup>18</sup> “Concluding Observations of the Committee on the Rights of the Child: Papua New Guinea,” CRC/C/Add.229 of 30 January 2004, para. 64.

<sup>19</sup> *Safeguards guaranteeing protection of the rights of those facing the death penalty*, adopted by UN Economic and Social Council resolution 1984/50 of 25 May 1984; here paragraph 3: “Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.”

<sup>20</sup> *The Canberra Times*, 25 March 1991.

penalty, the Chairman of the Samoan National Council of Churches cautioned that “*the laws should not be determined nor influenced by the nature of the crime, nor by public disposition.*” He was supported by a widely-respected Samoan women’s organization, Mapusaga o Aiga, who were reported as saying “*We are not in a position to judge the offender and the actual use of the death penalty does not solve the problem. Nor will it bring the victim back to life.*”<sup>21</sup>

Amnesty International is also concerned that the opinions of many people opposing the death penalty in PNG were not taken into account when it was re-introduced in 1991. The former Chief Justice, the late Sir Buri Kidu, stated his opposition to the death penalty in August 1990. The current Chief Justice, Sir Mari Kapi, when asked in 1991 what he would do if faced with the legal necessity of sentencing someone to death, said “*I would have to seriously consider resigning my position as a judge*”. Josepha Kanawi, then secretary of the Law Reform Commission and head of the Women and Law Committee, stated:

*The death penalty could lead rapists to kill their victims and any witnesses...And relatives of those hanged will be bound to seek 'payback' on the judicial system.*<sup>22</sup>

During the past two years, the debate in PNG about the death penalty and executions has led to opposing views. A few government ministers have spoken out in favour of executions, including Labour and Industry Minister Peter Yama, while others have raised questions about the direction PNG should take on this issue. Prior to the re-introduction of the death penalty for wilful murder in 1991, current Prime Minister Michael Somare was reported as saying it was not the answer for PNG’s law and order problems.<sup>23</sup> Last September, the Minister for Inter-Government Relations, Peter Barter, published an opinion piece in order “to open debate on the use of the death penalty”.<sup>24</sup> Raising questions about the arguments for and against the death penalty, he warned that PNG’s “*laws need to be discussed in an atmosphere of serenity and with commitment to promote public morality. Decisions made at a time of great grief or anger [in response to recent murders] may not be rational. This can lead to disastrous consequences.*”

## **2.6 The interests of victims and relatives**

In PNG, supporters for the death penalty point to the cruelty and suffering experienced by victims of violent crime and their relatives as a justification for executions by the state. This argument overlooks the views many relatives of murder victims have formed in response to the death penalty. In the United States, for example, the founder of an organization founded in 1976, *Murder Victims’ Families for Reconciliation*, Marie Deans, has stated that:

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<sup>21</sup> “Mapusaga o Aiga opposes death penalty,” *Samoa Observer*, 18 Feb 2003.

<sup>22</sup> *Time Australia*, 25 March 1991.

<sup>23</sup> *PNG Times*, 21 March 1991.

<sup>24</sup> “Hang ‘em high: Pros and cons”, *The National*, 18 September 2003.

*After a murder, victims' families face two things: a death and a crime. At these times, families need help to cope with their grief and loss, and support to heal their hearts and rebuild their lives. From experience, we know that revenge is not the answer. The answer lies in reducing violence, not causing more death. The answer lies in supporting those who grieve for their lost loved ones, not creating more grieving families. It is time we break the cycle of violence. To those who say society must take a life for a life, we say: "not in our name."<sup>25</sup>*

Members of the organization Journey of Hope – from Violence to Healing who lost their loved ones have actively campaigned against the death penalty. One family made the following statement:

*Our sister Nancy and her husband Richard were a young couple expecting their first child when they were shot to death in their home. They loved and valued life; our sister was carrying life within her when she died a terrifying and brutal death. Her last act as she was dying was to write a message of love in her blood. We can't imagine making the death of another human being her memorial.<sup>26</sup>*

Another family acknowledged an initial impulse for revenge:

*The emotions that family members experience in losing loved ones to violent crime ran the gamut in my family. I had aunts and uncles who wanted to personally wreak havoc and vengeance on the perpetrators. But my grandmother's response to the anger and outrage of other family members was that no human being had a right to determine who should live or die. My grandmother was a strong, quiet, deeply religious Black matriarch. Her ultimate belief in people was memorably displayed when the son of the woman who killed my uncle came to her house to play with my cousins. To the shock and horror of other family members, my grandmother welcomed him in. Her loving example helped lay the foundation of my opposition to capital punishment.<sup>27</sup>*

## 2.7 Fuelling a cycle of violence?

Reflecting cultural traditions resulting in current community responses to violent crime, Peter Barter argued that communities were already effectively resorting to the death penalty: “*This*

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<sup>25</sup> Published at <http://www.mvfr.org/index.jsp>.

<sup>26</sup> A quote by Jennifer Bishop, Board Chair of Murder Victims Family Members for Reconciliation, published on the Journey of Hope website www.journeyofhope.org. This and the following statements are also found in a book, *Not In Our Name: Murder Victims Families Speak Out Against the Death Penalty*, a publication of Murder Victims Families For Reconciliation ([www.mvfr.org](http://www.mvfr.org)), Barbara Hood & Rachel King, Editors.

<sup>27</sup> Pat Clark, published on the website of Journey of Hope [www.journeyofhope.org](http://www.journeyofhope.org).

*penalty is applied for sorcery. People accused of sorcery are tortured to death. There are no court proceedings that would be accepted by our judiciary as establishing guilt.*<sup>28</sup>

Few such cases have been brought to justice, as witnesses and police appear to be reluctant to intervene, fearing reprisals or accusations of sorcery against themselves. While such impunity is of serious concern to Amnesty International, it is not the subject of this report; neither is the following serious allegation of police extrajudicial executions, made by Minister Peter Barter:

*Police kill suspects. Some conscientious police believe the law is ineffectual and stops them maintaining order. They therefore kill known criminals. However, innocent people at the scene of a crime are also killed. The death penalty under these circumstances in part continues customary enforcement of law and order.*<sup>29</sup>

The churches in PNG have long been generally opposed to the death penalty, resisting its re-introduction in 1991 and speaking out during the recent debate on the issue. For example, Catholic Church Bishop of Lae, Henry Van Lieshout, and the President of the Catholic Bishops Conference of PNG, Archbishop Karl Hesse, have said that the death penalty was not a solution to violent crime in PNG. Archbishop Hesse said that the death penalty could not be said to be a deterrent when there was a good chance that murderers would not even face the courts, due to problems within the criminal justice system in bringing offenders to justice. He reminded PNG's predominantly Christian society that Jesus was the victim of a violent crime that disguised itself as a legal execution – yet that he told his followers that “violence is defeated by justice and forgiveness and not revenge”.<sup>30</sup> Sophia Gegeyo, General Secretary of the Papua New Guinea Council of Churches, emphasized that,

*As far as all the churches in Papua New Guinea are concerned no one has got a right to take a life [...] There is no evidence anywhere in the world that death penalty is an effective deterrent against violent crime. [...] It never deterred the people during the traditional times and it would never deter it now either.*<sup>31</sup>

### 3 The death penalty in the South Pacific

Papua New Guinea, like almost all independent states in the southern and central Pacific, is a member of the Pacific Islands Forum (Forum), the leading inter-governmental organization in the region whose leaders and government officials meet at least once every year. Of the 16 Forum member states, nine have either abolished the death penalty in law for all crimes or

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<sup>28</sup> “Hang ‘em high: Pros and cons”, *The National*, 18 September 2003. There is no death penalty for crimes that might be associated with ‘sorcery’, nor does PNG law allow communities to bring serious offenders to justice outside the court system.

<sup>29</sup> “Hang ‘em high: Pros and cons”, *The National*, 18 September 2003.

<sup>30</sup> “Death penalty no deterrent: Bishops”, *The National*, 1 April 2003.

<sup>31</sup> “PNG: Intense debate over death penalty”, *Radio Australia*, 10 February 2003.

never passed such laws, and two have abolished it for ordinary crimes.<sup>32</sup> Another three<sup>33</sup> are not known to have imposed a death sentence since becoming independent, and to Amnesty International's knowledge, only PNG has re-introduced the death penalty. Tonga has not executed anyone since 1982.

Samoa, Fiji and PNG are the only Forum states known to have imposed death sentences under criminal law in recent years, and the first two have now abolished it. While Fiji military law still retains a discretionary death penalty by firing squad, it has not been implemented for many years. Legal proceedings on the unconstitutionality of the death penalty in Fiji during 2002-2003<sup>34</sup> indicate that even if a Fiji court martial issued a death sentence, it could not be implemented because it would be inconsistent with Fiji's 1997 Constitution. Fiji's constitution is firmly based on international human rights principles, which bind the legislative, executive and judicial branches of government at all levels<sup>35</sup> and protect the rights to life and to freedom from cruel, inhuman and degrading punishment.

Outside Papua New Guinea, the most intensive debates on the death penalty in the South Pacific have occurred in Fiji and Samoa, where death sentences were issued following widely-reported murder and treason trials. These sentences were commuted to prison terms by the heads of state. As described below, a Fiji Parliament debate on a Bill to abolish the death penalty in the Fiji Penal Code coincided with the sentencing to death for treason of the leader of the May 2000 coup.

### **3.1 Fiji**

On 18 February 2002, coup leader George Speight was given a mandatory death sentence for treason by the Fiji High Court, even though the Fiji Government had already announced it would table draft legislation in parliament to abolish the death sentence for treason. The sentence was immediately commuted by the President to life imprisonment. This legislation, the Penal Code (Amendment) Act 2002, came into force on 11 March 2002. In explaining to parliament the Fiji Government's purpose to abolish the death penalty on 19 February 2002, the Attorney-General referred to internationally recognized human rights standards and declared the new law "*consistent with [Fiji's] international commitment adopted by no less authority than the UN General Assembly to the abolition of the death penalty.*" Specifically, he stated, that the legal amendment abolishing the death penalty in the Penal Code

*"more importantly [...] conveys the very firm belief and policy of the present Government against the taking of one's life. We oppose the use of the death penalty"*

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<sup>32</sup> abolished for all crimes: Australia, Marshall Islands, Micronesia, New Zealand, Palau, Samoa, Solomon Islands, Tuvalu, Vanuatu; abolished for ordinary crimes: Cook Islands, Fiji.

<sup>33</sup> Kiribati, Nauru, Niue.

<sup>34</sup> In coup-related proceedings on the sentencing for treason of Ratu Timoci Silatolu and Josefa Nata who were sentenced to life imprisonment in June 2003.

<sup>35</sup> Chapter 4, Bill of Rights, Section 21 (1) (a), *Constitution of the Republic of the Fiji Islands*.

*because it represents the ultimate cruel, inhumane and degrading punishment which violates the right to life.”<sup>36</sup>*

Members of the Fiji Parliament supporting the abolition of the death penalty also argued that the death penalty was an “*affront to the right to life which was given by God and could only be taken away by God.*” When the abolition amendment came to the vote, the Fiji Parliament, including parliamentarians who had been hostages and were beaten during the 2000 coup, voted almost unanimously, with one abstention, in favour of the abolition of the death penalty.

### **3.2 Samoa**

Samoa’s most prominent death penalty case followed the political assassination in July 1999 of a cabinet minister by two other cabinet ministers and one of their sons. The killing occurred during the 25th anniversary function of the ruling Human Rights Protection Party. When found guilty of murder<sup>37</sup> in 2000, the three convicted were given death sentences which were later commuted by the Head of State, Malietoa Tanumafili II. In April 2003, following the murder and rape of a five-year-old girl which led to public demands for executions, religious and political leaders in Samoa expressed their opposition to the death penalty. Deputy Prime Minister Misa Telefoni joined the chairman of the National Council of Churches, Rev. Ofa Fauola in publicly opposing the use of the death penalty.

On 15 January 2004, the Prime Minister of Samoa, Tuilaepa Sailele Malieagaoi, issued a statement making the following observations about the Samoan parliament’s vote to abolish the death penalty for all crimes:

*This is an historic day for Samoa. The Parliament, led by the government and supported by the Opposition Parties, has removed the death penalty from our laws.*

*The vote shows that:*

- Samoa formally recognizes that the death penalty has no place in our criminal justice system; and*
- Our political leaders are united in their view that Samoans do not need or want the death penalty.*

*Samoa is a country founded on God. We are overwhelmingly Christians and as a result we are, like many Pacific Island Countries, religiously observant.*

*After 40 years of independence we as a nation feel confident that our criminal justice system can cope without the need to judicially execute anyone who breaches our laws.*

*Punishment and the threat of punishment are important elements of our criminal justice system. For the most serious offences of murder and treason the law will now*

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<sup>36</sup> Attorney-General, Second Reading Speech, 19 February 2002.

<sup>37</sup> Under Samoan law at the time, the courts had no discretion in sentencing those found guilty of murder; the death sentence was mandatory.

*provide for a mandatory sentence of imprisonment for life. This is sufficient to act as a deterrent and to punish those people who may commit such serious offences.*

*The decision to remove the death penalty was made in the interests of Samoa and the Samoan people. In addition, Samoa, as a good international and regional citizen, recognizes overwhelming international and regional opinion which is opposed to the death penalty. This decision by the Samoan Parliament is further evidence of Samoa's recognition of its international and regional obligations and how seriously we take such obligations. [emphasis added]*

In response, on 8 March 2004, the Presidency of the European Union issued a declaration on behalf of the European Union, saying that it:

*considers that the abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights. It reaffirms its objective of working towards universal abolition of the death penalty and considers that the abolition of the death penalty in Samoa is an important step towards that aim. The Union considers that the decision of the Samoan Parliament represents a fundamental advance in the promotion of human rights in Samoa and an important contribution towards the Universal abolition of the death penalty [...]*

### 3.3 U. S. territory of American Samoa

Reference to the application of the death penalty in the United States has been used as an argument in support of the death penalty in PNG. However, Pacific territories closely linked to, or administered by the United States, have either abolished the death penalty, stopped using it or voted against moves towards executions. For example, in July 2000, the late American Samoa Governor Tauese Sunia called for the abolition of the death penalty, after the U.S. territory's parliament twice voted against draft legislation proposing lethal injections for executions.<sup>38</sup> The Governor had earlier stated he would refuse to sign such legislation into law if passed by parliament: "*I do not want to be part of a scheme to administer death [...] I am against killing people. It doesn't correct the crime that was committed and the taking of a life at any time doesn't make it right.*"<sup>39</sup> The last reported execution in American Samoa was in 1951 under the administration of the territory by the U.S. Navy. Governor Sunia argued that "*the death penalty is an archaic and cruel method of punishment, which is contrary to modern ideas of justice. It is also inconsistent with our Christian heritage where, as our motto states, 'Samoa, let God be first'*".<sup>40</sup>

The examples of government statements from American Samoa, Fiji and Samoa reflect a growing recognition in the South Pacific region of the significance of international human rights standards for a state's international obligations and its reputation as a 'good international citizen'. In addition, it is important to recognize that the vote for the abolition of the death penalty in both Fiji and Samoa was virtually unanimous, with the full support of the parliamentary opposition.

<sup>39</sup> *Pacific Islands Report*, 9 April 1999.

<sup>40</sup> "American Samoa Governor wants death penalty abolished", *PIDP/CPIS News*, 13 July 2000.

## 4 Why the death penalty is no solution

Amnesty International recognizes the need for effective measures to combat violent crime, including murder and rape. The organization considers however that the death penalty is qualitatively different from other forms of punishment such as imprisonment in that it is irrevocable. The death penalty is the premeditated and cold-blooded killing of a human being by the state in the name of justice. It is the ultimate cruel, inhuman and degrading punishment.

### 4.1 Human rights standards on the death penalty

International human rights standards encourage states which have not yet abolished the death penalty, to move towards its complete abolition. Each year since 1997, the UN Commission on Human Rights (UNCHR) has passed a resolution encouraging states to stop executions. In its April 2003 resolution, which was co-sponsored by PNG and 74 other UN member states,<sup>41</sup> the Commission called for states still retaining the death penalty

- 5 (a) Progressively to restrict the number of offences for which the death penalty may be imposed ...;*
- (b) To abolish the death penalty completely and, in the meantime, to establish a moratorium on executions;*

Amnesty International believes that the death penalty is incompatible with fundamental human rights enshrined both in PNG's own Constitution and in international instruments such as the Universal Declaration of Human Rights (UDHR). PNG's Constitution states that "*No person shall be submitted to torture ... or to treatment or punishment that is cruel or otherwise inhuman, or is inconsistent with respect for the inherent dignity of the human person*".<sup>42</sup> Article 3 of the UDHR states that "*[e]veryone has the right to life, liberty and security of person*". The UN General Assembly has affirmed that in countries where the death penalty has not yet been abolished, in order to fully guarantee the right to life, "*the main objective to be pursued is that of progressively restricting the number of offences for which capital punishment may be imposed, with a view to the desirability of abolishing this punishment in all countries*".

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<sup>41</sup> Seven more states than in 2002 co-sponsored the resolution, the highest number ever.

<sup>42</sup> *Constitution of Papua New Guinea*, Part III, Division 3, Subdivision B, Section 36, "Freedom from inhuman treatment".

The Human Rights Committee, which supervises the implementation of the International Covenant on Civil and Political Rights (ICCPR), has stated that “...*all measures of abolition should be considered as progress in the enjoyment of the right to life ...*”<sup>43</sup>. It also said “*the right to life...is the supreme right from which no derogation is permitted even in time of public emergency ... It is a right which should not be interpreted narrowly*”. In December 1989 the United Nations General Assembly adopted the Second Optional Protocol to the ICCPR aimed at the abolition of the death penalty. The protocol requires states parties to take all necessary measures to abolish the death penalty within their jurisdiction stating “*that abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights*”. PNG has not ratified the ICCPR or its Second Optional Protocol.

## 4.2 The death penalty as a so-called ‘deterrent’ against crime

*We are determined that the death sentence will never come back in this country. It is not because the death sentence has been scrapped that crime has reached such unacceptable levels. Even if the death sentence is brought back, crime itself will remain as it is.*

Nelson Mandela, speaking as President of South Africa which abolished the death penalty after its Constitutional Court in 1995 ruled that it violates the constitutional right not to be subjected to cruel, inhuman or degrading punishment, the right to life, the right to dignity and the right to equality. The court also rejected arguments that the death penalty acts as a deterrent, or that public opinion should be decisive on issues of constitutional rights.

The PNG Government is not alone in justifying the restoration of capital punishment on the grounds that it will deter further crime. The argument that it is necessary to kill an offender to dissuade other people from committing the same kind of crime is the most commonly employed argument by states which use the death penalty. However, study after study in diverse countries, including those struggling with violent crime, have failed to find convincing evidence that the death penalty will deter other people from committing particular crimes more than other types of punishment. The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988 and updated in 2002, concluded: “... *it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.*”<sup>44</sup>

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<sup>43</sup> This and following comments: Human Rights Committee, General Comment 6, Article 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 6 (1994).

<sup>44</sup> Roger Hood, *The Death Penalty: A Worldwide Perspective*, Oxford University Press, 3rd edition 2002, p. 230.

## 5 Conclusions and Recommendations

Amnesty International urges the PNG Government to consider the evidence and arguments presented in this report. The organization believes that the objective of deterring violent crime in PNG will not be achieved by the state killing even more people, but by substantial improvements to the effectiveness of the police and criminal justice systems. Amnesty International considers recent alternative measures taken by the government towards boosting police capacity, including by seeking assistance from donors like Australia, as a step in the right direction.<sup>45</sup>

The Minister of Justice stated in March 2004 that the government was studying judicial procedures on the death penalty in Singapore (and possibly Malaysia) and their practical application, with a view to adopting them in PNG. Amnesty International urges the PNG Government not to consider the application of the death penalty in Singapore as a model for PNG. In Singapore, which is believed to have the world's highest *per capita* execution rate,<sup>46</sup> official information about the use of the death penalty is shrouded in secrecy, and few executions are publicly reported. Government controls on the media and civil society organization mean there is virtually no public debate about the issue in Singapore. There are serious concerns about the legal process on the death penalty in Singapore, where in practice, the presumption of guilt may undermine principles of fair trial, and where a man was executed even after a court established his "sub-normal intelligence".<sup>47</sup> Recent case studies illustrate how the death penalty in Singapore often falls disproportionately and arbitrarily on the most marginalized or vulnerable members of society, including young people just entering adulthood, the poorly educated, impoverished or unemployed, or migrant workers.<sup>48</sup> Amnesty International is seriously concerned that PNG should seek to emulate mechanisms for the application of the death penalty from Singapore. Moves to reinstate executions in PNG would be a major step backwards in the protection of human rights in the country.

Amnesty International therefore urges the Papua New Guinea Government to:

- Take immediate steps towards abolition of the death penalty, in accordance with UN Commission on Human Rights resolutions, by declaring a moratorium on all executions; and commute all pending death sentences to terms of imprisonment.

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<sup>45</sup> At the time of writing, negotiations were continuing between the Australian and PNG governments about the deployment in PNG of some 230 Australian Federal Police officers after June 2004.

<sup>46</sup> See Amnesty International, *Singapore: The death penalty: a hidden toll of executions*, January 2004 (AI Index: ASA 36/001/2004).

<sup>47</sup> For example, Rozman Jusoh from Malaysia was initially acquitted of the capital offence of drug trafficking after a judge found him to have "sub-normal intelligence, with an IQ of 74". After an appeal by the prosecution, he was hanged in April 1996. See *Singapore: The death penalty: a hidden toll of executions*, January 2004 (AI Index: ASA 36/001/2004), section 6.2.

<sup>48</sup> See *Singapore: The death penalty: a hidden toll of executions*, January 2004 (AI Index: ASA 36/001/2004), section 6.2.

- Seek international assistance for police and prison services, including on the rehabilitation of young offenders, as a step towards a more effective criminal justice system.

Pending this, Amnesty International urges the government to:

- Discontinue government research into judicial and practical mechanisms for executions in Singapore or Malaysia as a model for PNG.
- Facilitate an informed public debate about capital punishment, including its effective abolition across the rest of the South Pacific, its lack of a proven unique deterrent effect, and about alternative methods of dealing with law and order which are consistent with human rights.
- Ensure that there are legislative provisions which prohibit the application of the death penalty on offenders who were juveniles at the time of committing the crime.
- Ensure that those facing the death penalty receive fair trials in accordance with international standards, including the right to adequate legal representation of their choice at every stage of the proceedings.
- Ensure that no prisoners, including those facing the death penalty, are held in conditions in which they risk serious illness or death.

Amnesty International urges the Australian Government to:

- Refrain from deploying Australian police officers in PNG under terms which may see them contribute to the imposition and application of the death penalty.